



DEPARTMENT OF THE ARMY
OFFICE OF THE ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY
9301 CHAPEK ROAD
FORT BELVOIR VA 22060-5527

July 9, 2019

SAAA-LS

Matthew Guariglia
MuckRock News
DEPT MR 53526
411A Highland Avenue
Somerville, MA 02144
Sent via email: 59276-15955915@requests.muckrock.com

Dear Mr. Guariglia:

This letter is in response to your Freedom of Information Act (FOIA) request dated October 1, 2018. You are seeking any emails, memos, or communications sent or received by the U.S. Secretary of the Army Dr. Mark Esper referencing "Space Force. Your request was assigned our office tracking number FA-19-0003.

We are releasing (2) pages with partial redactions that are responsive to your FOIA request. These documents were referred to us by the Office of the Secretary of the Army. All redactions and withholdings have been made pursuant to Exemptions (b)(5) and (b)(6) of the FOIA, as described below.

Exemption 5 of the FOIA 5 U.S.C. § 552(b)(5)

Exemption 5 protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Courts have interpreted Exemption 5 to encompass the privileges recognized by statute or case law in the civil discovery context. See U.S. v. Weber Aircraft Corp., 465 U.S. 792, 800 (1984); FTC v. Grolier Inc., 462 U.S. 19, 26 (1983) at 26, NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). In this case, the applicable privileges that serve as bases for citing Exemption 5 are the Deliberative Process Privilege.

Deliberative Process Privilege

Exemption 5 of the FOIA which protects from disclosure "interagency or intra-agency memorandums or letters which would not be available by law to a party. . . in litigation with the agency": 5 U.S.C. Section 552(b)(5)(1994). Exemption 5 includes the "Deliberative Process Privilege," which protects from release agency records that disclose the agency's decision-making process. NLRB V. Sears, Roebuck & Co., 421 U.S. 132, 95 S.Ct. 1504, 44 LEd.2d. 29 (1975) and Jordan v. Department of Justice, 591 F2d 75.3 (D.C. Cir. 1978) (en banc). In this case, the document you requested contains specific recommendations and frank opinions. As such, it forms part of the

“give-and-take” between agency officials involved in the decision-making process. These recommendations and opinions do not necessarily represent the views of the Department of the Army. Release of such pre-decisional and deliberative exchanges would chill the open communication between Federal employees as they would fear that their developing thoughts and opinions would be shared with the public. Accordingly, this information is exempt from release under the deliberative process privilege of exemption (b)(5) of the FOIA.

Exemption 6 of the FOIA 5 U.S.C. § 552(b)(6)

Exemption (b)(6) of the FOIA protects from mandatory disclosure “personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” 5 U.S.C. § 552(b)(6) (2011). To qualify for protection under Exemption (b)(6), records must meet two criteria: (1) they must be “personnel and medical files and similar files,” (2) the disclosure of which “would constitute a clearly unwarranted invasion of personal privacy.” *Id.*; *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599-603 (1982). The first prong is met if the information “appl[ies] to a particular individual” and is “personal” in nature. *New York Times Co. v. NASA*, 852 F.2d 602, 606 (D.C. Cir. 1988). The second prong requires courts to strike a “balance between the protection of an individual’s right to privacy and the preservation of the public’s right to government information.” *United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982). The “public interest” in the analysis is limited to the “core purpose” for which Congress enacted the FOIA: to “shed . . . light on an agency’s performance of its statutory duties.” *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989).

We are withholding the names of personnel, other than Senior Executive Service members and General Officers and contact information for all Army personnel (e.g., email addresses and direct-line telephone numbers) under Exemption 6. 5 U.S.C. § 552(b)(6). See *Judicial Watch, Inc. v. United States*, No. 03-1160, 2004 WL 26736, at *4 (4th Cir. Jan. 6, 2004). Under the Exemption (b)(6) balancing test, the Supreme Court held in a similar case that disclosure of employee addresses “would not appreciably further the citizens’ right to be informed about what their Government is up to and, indeed, would reveal little or nothing about the employing agencies or their activities.” *United States Dep’t of Defense v. Fed. Labor Relations Auth.*, 510 U.S. 487 (1994). The same is true here. Disclosure of the names, contact and personal information of government employees would contribute little to the public’s understanding of government activities. By contrast, such disclosure would constitute a “non-trivial” and “not insubstantial” invasion of government employees’ privacy interests. *Id.* at 500, 501.

For any further assistance and to discuss any aspect of your request, you have the right to contact the Army FOIA Public Liaison Officer, Alecia Bolling, by email at us.army.hqda-oaa-ahs.mbx.rmda-foia-public-liaison@mail.mil or by phone at (571) 515-0306. Additionally, you may contact the Office of Government Information Services (OGIS) at the national Archives and Records Administration (NARA) to inquire about the

FOIA mediation services they offer. The contact information for OGIS is as follows: NARA-OGIS, 8601 Adelphi Road-OGIS, College Park, MD 20740-6001, email at ogis@nara.gov, telephone number (202) 741-5770 toll free at (877) 684-6448 or by facsimile at (202) 741-5769.

This partial denial has been made on behalf of the Administrative Assistant to the Secretary of the Army, who has designated that this office act as the Initial Denial Authority for records maintained by the Office of the Secretary of the Army and its serviced activities. You have the right to file an administrative appeal with the Office of the Army General Counsel within ninety (90) calendar days. See 32 C.F.R. § 518.17(c). Their mailing address is:

Department of the Army
Office of the General Counsel
104 Army Pentagon, Room 2E724
Washington, D.C. 20310

If you have any questions regarding this letter or the information furnished, please contact this office at (703) 614-5871 or email at usarmy.belvoir.hqda-oaa-rpa.mbx.oaa-cals-mailbox-foia@mail.mil. In all correspondence please refer to FOIA number FA-19-0003

Sincerely,

A handwritten signature in dark ink, appearing to read 'Paul V. DeAgostino', with a long horizontal line extending to the right.

Paul V. DeAgostino
Senior Counsel

Enclosure(s): 2 pages

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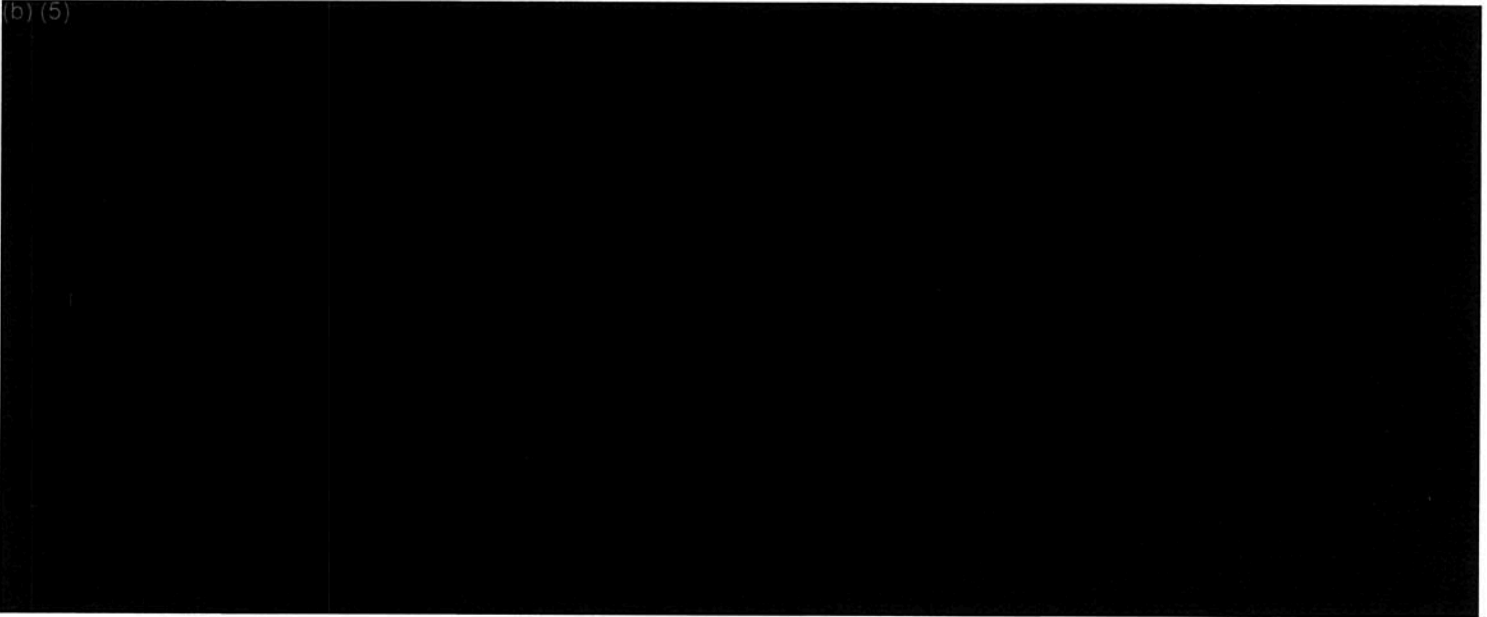
EXSUM

(U) SECURING SPACE: A DISCUSSION ON THE US SPACE FORCE – 10 Sep 18. (U) The Center for Strategic and International Studies (CSIS) hosted a panel discussion on President Trump's newly announced Space Force proposal featuring General Robert Kehler (USAF, Ret.), former Commander, US Strategic Command (USSTRATCOM); HON Sean O'Keefe, CSIS Senior Advisor and former NASA Administrator; HON Robert Work, Former Deputy Secretary of Defense; and Letitia Long, former Director of the National Geospatial-Intelligence Agency. HON John Hamre, President and CEO of CSIS, moderated the discussion.

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APPROVED BY: Mr. (b) (6)

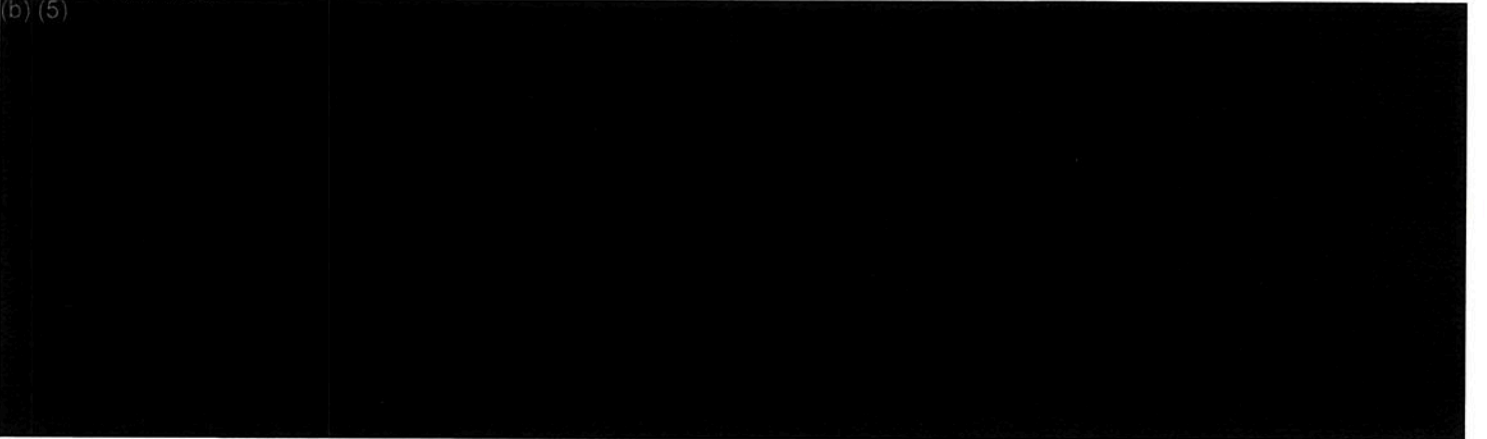
- Kehler

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- Work

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- Long

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